

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5373 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GUJARAT KAMGAR PANCHAYAT

Versus

STATE OF GUJARAT

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Appearance:

MR GM JOSHI for Petitioner

MR PK JANI for Respondent No. 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/01/98

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, Gujarat Kamgar Panchayat, filed this Special Civil Application and prayer has been made for directions to the respondent to pay to the workmen listed at Annexure 'A' to the Special Civil Application, their regular wages from March 1997 onwards and further

for directing the respondent No.4 to pay to the workmen regular wages every month thereafter.

3. The facts of the case, in brief, are that as per the order of this Court, as sought by the Gujarat Pollution Control Board, this Court has ordered closure of the unit and directed the respondent No.4 to pay regular wages. Since March 1997, the respondent No.4 is not paying salary to these workers though they are attending the duty regularly but are not given the work.

4. A preliminary objection has been raised by learned counsel for the respondents that the petition on behalf of the Union is not maintainable, as if the Union wants to espouse the cause of its members, then for the same, remedial forum is provided under the Industrial Disputes Act, 1947.

5. However, I do not consider it to be appropriate to go on this question in the present case as this petition otherwise deserves to be dismissed. On the record of this Special Civil Application, the petitioner has not produced the order which has been passed by this Court ordering closure of the unit and directing the respondent No.4 to pay wages to the workmen regularly. However, the learned counsel for the petitioner admits that till date the said unit is lying closed. When the unit is lying closed, then there is no question for giving of the work to the workmen. The learned counsel for the petitioner contended that the Inspector of Factories has written a letter to the petitioner-Union that the respondent-Unit is closed pursuant to the order passed by this Court and that the manufacturing process is stopped since two years and because the workmen are entitled to wages exceeding Rs.600/- p.m., obviously they are not covered under the Payment of Wages Act. Whatever information given by the Inspector of Factories is not relevant, but the petitioner should have produced on record of this Special Civil Application, the order passed by this Court. Be that as it may, if it is taken that while ordering for closure of the unit of respondent No.4, this Court has ordered for regular payment of wages to the workers and the respondent No.4 is not complying with that order, then the appropriate remedy for the petitioner would have been to approach the Labour Court under section 33(c)(2) of the Industrial Dispute Act, 1947, for computation of amount and for recovery of the said amount. Second remedy would have been to take appropriate action for enforcement of the order passed by this Court in the writ petition, as alleged by the petitioner. The order passed by this Court of paying of

regular wages by respondent No.4 to the workmen cannot be executed by fresh petition under Article 226 of the Constitution. If again such directions are given and the respondent No.4 fails to comply with the same, then it will be an exercise in futility. Even if it is taken that the workmen are not covered under the provisions of the Payment of Wages Act, then too, the remedy of approaching under Section 33(c)(2) of the Industrial Disputes Act, 1947, is there and further the petitioner should have taken appropriate action for enforcement or compliance of the order, as alleged to be passed in the favour of workmen by this Court.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

(sunil)